

governing the testimony of the other witnesses, taking into consideration the fact that he is the defendant and charged with the crime; and while for that reason alone you should not disregard his testimony, yet the fact that he is testifying in his own behalf may be considered by you, and you should fairly and impartially consider his evidence as you should that of all the witnesses. You should also consider whether the testimony of the defendant is true, and made in good faith or whether it is for the purpose of avoiding conviction; and in the light of all the facts and circumstances as presented by the evidence you should give to the testimony of each witness such weight as you believe it fairly entitled to.

Instruction No. 20. Two forms of verdict are here submitted to you. If you find the defendant guilty on any count or counts the form of your verdict will be: 'We, the jury, find the defendant Lester Tilton Guilty of the charge contained in (counts 1, 3, 4, 5, and 6 separately) of the information filed herein.'

"If you find the defendant not guilty on any count or counts, the form of your verdict will be: 'We, the jury, find the defendant Lester Tilton Not Guilty of the charge contained in (counts 1, 3, 4, 5, and 6 separately) of the information filed herein.'

"When you have agreed upon your verdicts, you will cause the same to be signed by one of your number, whom you may have chosen as foreman, and return the verdicts into court."

On November 3, 1933, the jury returned a verdict of guilty, and on November 27, 1933, the court imposed a fine of \$200 on each of the five counts of the information.

M. L. WILSON, *Acting Secretary of Agriculture.*

21802. Misbranding of Pabst's O.K. Specific. U. S. v. Fridolin Pabst (Pabst Chemical Co.). Judgment of guilty. Fine, \$100. (F. & D. no. 27566. I.S. nos. 36901, 38409.)

Examination of the drug preparation, Pabst's O. K. Specific, disclosed that it contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed in the labeling.

On May 6, 1932, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Fridolin Pabst, trading as the Pabst Chemical Co., Chicago, Ill., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about March 2, 1931, from the State of Illinois into the State of Texas, and on or about July 7, 1931, from the State of Illinois into Puerto Rico, of quantities of Pabst's O. K. Specific that was misbranded.

Analysis of a sample of the article by this Department showed that it consisted essentially of cubeb oil, copaiba oleoresin, extracts of plant drugs, including buchu and uva ursi, sugar, alcohol, and water.

It was alleged in the information that the article was misbranded in that certain statements, designs, and devices appearing in the circulars shipped with the article, regarding its curative and therapeutic effects, falsely and fraudulently represented that the article was effective in the treatment of and as a cure for gonorrhoea and gleet, either when used alone or in connection with "Okay Tonic", whereas it was not effective in the treatment of or as a cure for gonorrhoea and gleet, either when used alone or in connection with "The Okay Tonic."

On January 9, 1934, the defendant having entered a plea of not guilty to the information and a jury having been waived and the case submitted to the court, judgment was entered finding the defendant guilty and imposing a penalty of \$100.

M. L. WILSON, *Acting Secretary of Agriculture.*

21803. Misbranding of Ora-Noid Mouth Powder. U. S. v. 33 Packages of Ora-Noid Mouth Powder. Tried to the court. Judgment for the Government. Decree of condemnation, forfeiture, and destruction. U. S. v. 10 Packages of Ora-Noid. Default decree of condemnation, forfeiture, and destruction. (F. & D. nos. 28242, 28924. I.S. no. 53785. S. No. 6103. Sample no. 4963-A.)

Examination of the drug preparation, Ora-Noid Mouth Powder, disclosed that the article contained no ingredient or combination of ingredients capable of producing certain curative and therapeutic effects claimed in the labeling.

On April 25, 1932, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the

district court a libel praying seizure and condemnation of 10 packages of Ora-Noid Mouth Powder at Detroit, Mich. On September 19, 1932, a libel was filed in the Eastern District of Wisconsin against 33 packages of Ora-Noid Mouth Powder at Milwaukee, Wis. It was alleged in the libels that the article had been shipped in interstate commerce on or about March 12, 1932, and August 30, 1932, by the Ora-Noid Co., from Chicago, Ill., into the States of Michigan and Wisconsin, respectively, and that it was misbranded in violation of the Food and Drugs Act as amended.

The libels charged that the article was misbranded in that the following statements, regarding its curative and therapeutic effects, appearing on the tin container, carton, and in the circular shipped with the article were false and fraudulent: (Tin) "Directions * * * Ora-Noid Mouth Powder cleans * * * tissues of the mouth, and strengthens the gums. * * * As a gargle, a solution of Ora-Noid Mouth Powder in water twice daily will prove effective in the throat. * * * A solution of Ora-Noid Mouth Powder exerts a high osmotic pressure. It draws the fluids out of inflamed tissues, thereby relieving congestion and helps to restore the tissue to a normal healthy condition. Important. Ora-Noid Mouth Powder should be used also as an aid in the treatment of pyorrhea, trench mouth and gingivitis (bleeding and inflamed gums). In such cases it is advisable to hold the solution in the mouth from 10 to 15 minutes, or longer, and not to use a tooth brush for a few days until the soreness has subsided"; (carton) "Ora-Noid is an effective aid in the treatment of all mouth disturbances, pyorrhea, gingivitis, (soft, spongy, bleeding gums), trench mouth, canker sores, sore throat, inflamed tonsils, cough * * * in fact, wherever the tissues of the mouth and its accessory organs are involved. Ora-Noid Mouth Powder is a Complete Oral Prophylactic In Itself * * * it keeps the gums in condition; it strengthens all the tissues in the mouth including the tongue, the palate, the throat and the mucous membranes on the inside of the cheeks. The use of Ora-Noid Mouth Powder alone, according to directions, performs the function of keeping the teeth, gums, tongue, mouth and throat * * * healthy. * * * It Expels Germs. Through the operation of the law of osmosis, Ora-Noid Mouth Powder, when retained in the mouth for several minutes according to directions, draws the germs out of the crypts in the tissues. Any acid that may be present in the mouth is promptly neutralized. Thus, through a physical force, bacteria hidden away in those crypts of the mouth and tongue, which no antiseptic can reach, are flushed out and expelled without in any way having destroyed, killed, or impaired any tissue"; (circular) ^{insert} "It keeps the gums in condition; it strengthens all the tissues in the mouth including the tongue, the palate, the throat and the mucous membrane on the inside of the cheeks. Thus Ora-Noid Mouth Powder is a complete oral prophylactic in itself. The use of Ora-Noid *alone*, according to directions, performs the function of keeping the teeth, gums, tongue, mouth and throat clean and healthy. * * * Ora-Noid Expels Bacteria * * * Through the operation of the law of osmosis, Ora-Noid (when retained in the mouth for several minutes according to directions) draws the germs out of the crypts in the tissue into the salt solution. * * * Thus, through a physical law, bacteria are flushed out from hiding places which cannot be reached by mere surface contact. This entire solution is then expelled from the mouth together with the germs therein, and without in any way having destroyed or impaired any tissue. The germs are dislodged and removed—and note that they are removed not only from the surface of the tissue, but from within the tissue crypts. * * * How Ora-Noid Acts. * * * As the tissue cells attempt to dilute the Ora-Noid solution by pouring forth their liquid content (as a result of osmotic force), the bacteria are dislodged and flushed out from the surfaces of the mucous membrane and carried away. Bacteria hidden away in those crypts of the mouth and tongue which no antiseptic can reach, cannot escape the operation of this osmotic force which flushes them out. Nature then replenishes the tissues with fresh fluids which are free from bacteria. The operation of the osmosis leads also to a temporary drying and shrinking of the tissue. This reduces congestion wherever it is present and thus, for the time being, relieves the tissue from irritation. Thereupon nature begins the rapid repair of the tissue. Inflammation tends to disappear very rapidly. Ora-Noid clears the way for nature to make repairs. * * * But Ora-Noid, through osmotic force, draws out the fluids from within the tissues and, in doing so, flushes out the bacteria no matter how securely they may be hidden away. For All Disorders of the

Mouth. In addition to its function of keeping the teeth, mouth and throat in a clean, healthy condition, Ora-Noid Mouth Powder is most helpful as an adjunct in the treatment of disturbed oral conditions. It is beneficial in cases of: Pyorrhea, Gingivitis (Bleeding and Spongy Gums), Loose Teeth, Sore Mouths caused by plates and bridges, Trench Mouth, Canker Sores, Sore Throat, Inflamed Tonsils, Coughs, Bad Breath, and, in fact, wherever the tissues of the mouth and throat are involved. In all such disorders, the normal treatment as described above is to be used, except that where the gums are sensitive or badly affected, the tooth brush should be dispensed with until the inflammation has been relieved. In severe cases Ora-Noid should be used three times a day, morning, noon and night. * * * Establishing a healthy blood circulation in the gums and mucous membranes of the mouth. * * * Correcting faulty physiology of the mouth, thereby raising its natural resistance to disease."

The Ora-Noid Co., Chicago, Ill., entered an appearance and filed a claim and answer in each case. On October 27, 1933, the case in the Eastern District of Wisconsin was heard by the court and was taken under advisement, and on December 15, 1933, the court entered the following findings of fact and declarations of law (Geiger, D. J.):

"This cause having come on for hearing on October 27, 1933, before the court without a jury, the jury having been waived in writing, on the issues joined upon the libels of the United States of America and the answer of the Ora-Noid Company, an Illinois corporation, and intervening claimant herein, and the aforesaid intervening claimant by its answer having admitted that it is the manufacturer and shipper of the 33 packages, more or less, of Ora-Noid Mouth Powder and that the said packages were shipped for sale by it from Chicago, Ill., on or about August 30, 1932, via parcel post, and consigned to the Milwaukee Drug Company at Milwaukee, Wis., and further admits that the said shipment of Ora-Noid Mouth Powder was interstate and by common carrier and was delivered to consignee; and witnesses having been called and evidence, both oral and documentary, having been adduced on behalf of the libellant, and the claimant having declined and failed to offer any evidence in contravention thereof, and the court having heard the arguments of counsel and being fully advised in the premises makes the following findings of fact and declarations of law.

"Findings of fact. I. That pursuant to the libel and process duly issued out of this court the United States marshal seized 29 packages of Ora-Noid Mouth Powder in the possession of the Milwaukee Drug Company, Milwaukee, Wis., and the same are now being held in his possession within the jurisdiction of this court.

"II. That the Ora-Noid Mouth Powder, seized as aforesaid, is a preparation consisting of the following ingredients in approximately the following proportions:

	Percent
Salt.....	46.38
Chalk.....	19.53
Bicarbonate of soda.....	13.75
Calcium phosphate.....	4.34
Magnesium phosphate.....	1.52
Potassium phosphate.....	1.81
Sodium phosphate.....	1.96
Magnesium sulphate.....	1.38
Potassium sulphate.....	2.87
Bicarbonate of potassium.....	2.64
Cinnamon and clove flavoring.....	Present

"III. That the several packages of Ora-Noid Mouth Powder, seized as aforesaid, each contain a circular containing statements, designs, and devices as follows: A * * *

"IV. That a number of the statements appearing in the circular set forth in finding III are repeated in substance on the lithographed can which constitutes the immediate container of the Ora-Noid Mouth Powder and also on the outside of the carton which constitutes the outer container or retail package as the preparation is offered for sale to the consumer.

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"V. That the Ora-Noid Mouth Powder, seized as aforesaid, is not a complete oral prophylactic in itself as stated on page 2 of the circular.

"VI. That the circular contained in each of the aforesaid packages of Ora-Noid Mouth Powder represents that the use of the powder as directed will, by the operation of the law or phenomena of osmosis produce a copious flow of liquids out from the mucous membranes which constitute the lining of the oral cavity and the surface of the gums and thereby flush out substantial numbers, if not all of the pathogenic organisms from such mucous membranes, whereas in truth and in fact the use of the powder as directed would produce, if any, such a negligible flow of liquids from the mucous membranes as to have no material effect upon the number of pathogenic organisms present in such mucous membranes.

"VII. That the experiment outlined on pages 3 and 4 of the circular contained in each of the aforesaid packages of Ora-Noid Mouth Powder under the heading 'The Law of Osmosis what is It?', is set forth therein for the obvious purpose of conveying to the mind of the purchaser that the law or phenomena of osmosis operates the same through living tissue as it does through a collodion membrane, whereas such evidence as is available to science indicates quite definitely that in some instances at least living tissue acts entirely contrary to the law or phenomena of osmosis, and with respect to most of the living tissues of the body their action, with respect to the law or phenomena of osmosis, is unknown to science and cannot, within the sphere of present-day scientific knowledge, be demonstrated.

"VIII. That when read as a whole, the statements, designs, and devices appearing in the circular contained in each package of the Ora-Noid Mouth Powder, seized as aforesaid, represents to the purchasers and users that the said Ora-Noid Mouth Powder will have curative and therapeutic effect on diseases of the mouth substantially beyond that exerted by ordinary mechanical cleansing agents, whereas in truth and in fact, it will not have such curative or therapeutic effect.

"IX. In addition to Ora-Noid Mouth Powder, the claimant company manufactures another preparation which it sells to dentists under the name of Ora-Noid Special. In literature disseminated by the Ora-Noid Co. in the past advertising this Ora-Noid Special to dentists the company has given full recognition to the necessity of instrumentation in the treatment of pyorrhea and other diseases of the mouth and has in such advertising recommended the use of Ora-Noid Mouth Powder by the patient at home for cleansing purposes. It thus appears conclusively, and is found to be the fact, that at the time the Ora-Noid Mouth Powder here in question was shipped, the claimant, Ora-Noid Co., knew the necessity of instrumentation at the dentist's chair in the treatment of pyorrhea, knew the limitations of Ora-Noid Mouth Powder, and knew that the organisms of disease in the tissues of the mouth cannot be flushed out, in any substantial degree, by the use of Ora-Noid Mouth Powder alone.

"X. That findings V, VI, VII, and VIII, set forth above, are in accord with the consensus of present-day medical and scientific opinion.

"Declarations of law." "XI. That the aforesaid packages of Ora-Noid Mouth Powder are, by reason of the purposes for which the preparation is recommended on its label and in the circular contained within each of the packages, a drug within the meaning of the Act of Congress of June 30, 1906, known as the Food and Drugs Act (U.S.C. title 21, secs. 1-15).

"II. Persons who make or deal in proprietary medicines alleged to be curative are in a position to have superior knowledge and should be held to good faith in their statements. It being found as a fact that some of the statements appearing in the circular and on the packages of Ora-Noid Mouth Powder here in question concerning the curative and therapeutic effect of the article were made with knowledge of their falsity on the part of the Ora-Noid Co., the manufacturer and shipper, and other such statements, found to be false, are of such a nature as to indicate that the Ora-Noid Co. uttered and published them without knowledge of the subject matter and in reckless and wanton disregard of their truth or falsity, the court concludes and declares the statements of both categories to be fraudulent.

"III. The circular contained in each of the packages of Ora-Noid Mouth Powder, seized as aforesaid, and the cans and cartons forming the package bear statements, designs, and devices concerning the curative and therapeutic effect of the Ora-Noid Mouth Powder which are false and fraudulent.

"IV. The packages of Ora-Noid Mouth Powder, seized as aforesaid, are misbranded within the meaning of the act of Congress of June 30, 1906, known as the Food and Drugs Act, as amended by the Act of August 23, 1912 (U.S.C. title 21, secs. 1-15)."

On December 15, 1933, judgment of condemnation and forfeiture was entered, and the court ordered the product destroyed by the United States marshal. On January 3, 1934, an order having been entered in the case instituted in the Eastern District of Michigan permitting withdrawal of the claim and answer, judgment was entered ordering that the product be destroyed.

M. L. WILSON, *Acting Secretary of Agriculture.*

21804. Adulteration and misbranding of Dr. Koch's Mentholene Ointment, Dr. Koch's Cold and Grip Tablets, and Dr. Koch's Sept-O-Cide; misbranding of Dr. Koch's Rolatum Healing Salve, Dr. Koch's Mustard Ointment, We-No-Nah Poultry Tonic, and Dr. Koch's Vegetable Family Tea. U. S. v. Dr. Koch Vegetable Tea Co. Plea of nolo contendere. Fine, \$130. (F. & D. no. 29413. I.S. nos. 39539, 39540, 41045 to 41050 incl., 41110, 41111, 41112, 47027, 47028, 47029.)

Examination of the drug preparations involved in this case disclosed that the articles contained no ingredients or combinations of ingredients capable of producing certain curative and therapeutic effects claimed in the labelings. Tests conducted to determine the truthfulness of the antiseptic claims for the Mentholene Ointment, and the antiseptic and germicidal claims for the Sept-O-Cide proved that the former was not an antiseptic, and that the latter was not an antiseptic and germicide when used according to directions. The Cold and Grip Tablets, upon analysis, were found to contain less acetanilid than was declared on the label.

On January 23, 1934, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District court an information against the Dr. Koch Vegetable Tea Co. a corporation, Winona, Minn., alleging shipment by said company in violation of the Food and Drugs Act as amended, between the dates of December 1, 1931, and January 5, 1932, from the State of Minnesota into the States of West Virginia, Wisconsin, and Illinois of various shipments of Dr. Koch's Mentholene Ointment, Dr. Koch's Cold and Grip Tablets, and Dr. Koch's Sept-O-Cide which were adulterated; and of quantities of Dr. Koch's Rolatum Healing Salve, Dr. Koch's Mustard Ointment, We-No-Nah Poultry Tonic, and Dr. Koch's Vegetable Family Tea, which were misbranded.

Analyses of samples of the articles by this Department showed that Dr. Koch's Mentholene Ointment consisted essentially of small proportions of menthol, camphor, and eucalyptol incorporated in a petrolatum and paraffin base; that Dr. Koch's Cold and Grip Tablets consisted essentially of acetanilid (2.13 grains per tablet), caffeine (0.24 grain per tablet), phenolphthalein, extracts of plant material, including cinchona, starch, and calcium carbonate; that Dr. Koch's Sept-O-Cide consisted essentially of small proportions of zinc chloride, saccharin, formaldehyde, an acid, volatile oils, including peppermint oil, thymol, and menthol, alcohol, glycerin, and water, colored with a red dye; that Dr. Koch's Rolatum Healing Salve consisted essentially of zinc oxide and a small proportion of phenol incorporated in petrolatum; that Dr. Koch's Mustard Ointment consisted essentially of volatile oils, including mustard oil, methylsalicylate and capsicum oleoresin, incorporated in petrolatum; that We-No-Nah Poultry Tonic consisted essentially of sulphur, calcium carbonate, sodium chloride, iron sulphate, plant material, including capsicum, charcoal, phosphates, sulphates, and a small proportion of cantharides; and that Dr. Koch's Vegetable Family Tea consisted essentially of plant material, including senna, sassafras, coriander, fennel, licorice, uva ursi, and sage.

It was alleged in the information that the Mentholene Ointment and the Sept-O-Cide were adulterated in that their strength and purity fell below the professed standard and quality under which they were sold in that the former was represented to be an antiseptic, whereas it was not an antiseptic; and the latter was represented to be antiseptic, germicidal, purifying, and germ-destroying and an efficient antiseptic and germicide when used as directed, whereas it was not antiseptic, germicidal, purifying, and germ-destroying, and was not an efficient antiseptic and germicide when used as directed.

Adulteration of the Cold and Grip Tablets was alleged for the reason that the article fell below the professed standard and quality under which it was sold, since each tablet was represented to contain $2\frac{1}{2}$ grains of acetanilid,